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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,978	03/13/2001	Marvin A. Leedom	2506.1009-005	2623

21005 7590 01/21/2005

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CONCORD, MA 01742-9133

EXAMINER

NI, SUHAN

ART UNIT	PAPER NUMBER
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2643

DATE MAILED: 01/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/804,978

Applicant(s)

LEEDOM ET AL.

Examiner

Suhan Ni

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 10-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

SUHAN NI
PRIMARY EXAMINER

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This communication is responsive to the amendment dated 10/12/2004.
2. Newly submitted claim 38 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the newly added limitation of “the battery is substantially permanently affixed within the housing” is not originally claimed.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 38 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1-6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saltykov (U. S. Pat. - 6,681,021).

Regarding claim 1, Saltykov discloses a hearing aid, comprising a first half shell; a second half shell (Col. 3, lines 39-40) attached to the first half shell to form a housing (2) fitting into a user's ear canal; a plurality of conventional electrical components mounted within a housing formed by shells (Fig. 1); and securing means as claimed. But Saltykov does not clearly teach that a flexible tip as claimed. Since providing a desirably flexible tip for a hearing aid is

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very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to provide a suitable flexible tip for the hearing aid as an alternate choice, in order to provide users a rather comfortably fitted hearing aid.

Regarding claims 2-3, Saltykov does not clearly teach an interlock-joint securing means as claimed. Since providing securing means for firmly locking two half shells of the hearing aid housing is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to provide a suitable securing means, such as an interlocking joint for securing both shells together as an alternate choice, in order to effectively and efficiently manufacture the hearing aid.

Regarding claims 4-5, Saltykov does not clearly teach a microphone retainer as claimed. Since providing an acoustic filter for mounting a microphone into a hearing aid is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to provide a suitable acoustic filter, such as a foam cushion for mounting a microphone into a hearing aid housing, in order to reduce some undesirable vibrations.

Regarding claim 6, Saltykov does not clearly teach a mushroom shaped tip as claimed. Since providing a mushroom shaped cerumen trapping tip for a hearing aid is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to provide the mushroom shaped tip for the hearing aid housing, in order to trap cerumen from user's ear canal and make the hearing aid more durable.

Regarding claim 9, Saltykov does not clearly teach an adhesive agent as claimed. Since providing a desirable adhesive agent to seal a hearing aid housing members is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention

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was made to provide a suitable adhesive agent for sealing or further sealing the housing members of the hearing aid as an alternate choice, in order to reduce some undesirable vibration and also make the hearing aid more durable.

4. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saltykov (U. S. Pat. - 6,681,021) in view of Reiter et al. (U. S. Pat. - 5,606,621).

Regarding claims 7-8, Saltykov does not clearly teach a receiver as claimed. Reiter et al. disclose a similar structured hearing aid, comprising an interchangeable tip (18, 22) having a receiver (20). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide the receiver taught by Reiter et al. for the tip of the hearing aid as an alternate choice, in order to deliver an acoustic output to the user more efficiently and effectively.

Response to Amendment

5. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL

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EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

7. Any response to this final action should be mailed to:

**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

or faxed to:

(703) 308-9051, (for formal communications; please mark "EXPEDITED PROCEDURE"), or

(703) 305-9508, (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to:

**Receptionist, Sixth Floor,
Crystal Park II,
2121 Crystal Drive,
Arlington, Virginia 22202**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Suhan Ni** whose telephone number is **(703)-308-9322**, and the number for fax machine is **(703)-305-9508**. The examiner can normally be reached on Monday through Thursday from 9:00 am to 7:30 pm. If it is necessary, the examiner's supervisor, **Curtis Kuntz**, can be reached at **(703) 305-4708**.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (**PAIR**) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

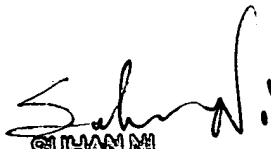
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system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

10. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 305-3900.

SN

January 12, 2005


SUHANI
PRIMARY EXAMINER